

May 25, 2012

**VIA ECFS**

David S. Turetsky  
Chief, Public Safety and Homeland Security Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: EB Docket No. 04-296; Request For Waiver Of CAP Obligations

Dear Mr. Turetsky:

ION Media Wassau License, Inc. ("ION"), licensee of television station WTPX-TV, Antigo, Wisconsin (the "Unserved Station"), by its attorney and pursuant to Section 11.52(d)(4) of the Commission's rules, 47 C.F.R. § 11.52(d)(4), hereby respectfully requests a waiver of the obligations set forth in Part 11 of the Commission's rules, 47 C.F.R. 11, regarding monitoring for, receiving, and processing CAP-formatted messages (the "CAP Rules") with respect to the Unserved Station. As detailed below, reliable broadband Internet access is physically unavailable at the Unserved Station's transmitter facilities. Because compliance with the CAP Rules is impossible without broadband Internet access, a waiver of the CAP Rules would serve the public interest.

The Commission may waive its rules for good cause shown.<sup>1</sup> The Commission may also exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest, and grant of a waiver would not undermine the policy served by the rule.<sup>2</sup>

In the *EAS Fifth Report and Order*,<sup>3</sup> the Commission concluded that "the physical unavailability of broadband Internet service offers a presumption in favor of a waiver" of the CAP Rules.<sup>4</sup> It reached this conclusion because "the physical availability of broadband Internet

<sup>1</sup> 47 C.F.R. § 1.3. See also *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("FCC has authority to waive its rules if there is 'good cause' to do so.")

<sup>2</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

<sup>3</sup> Review of the Emergency Alert System, *Fifth Report and Order*, 27 FCC Rcd 642 (2012) ("*EAS Fifth Report and Order*").

<sup>4</sup> *EAS Fifth Report and Order*, 27 FCC Rcd at 696.

access would be a physical predicate for compliance with the requirement that EAS Participants be able to receive CAP-based alerts.”<sup>5</sup> Therefore, the Commission concluded that it would not “be appropriate to require EAS Participants to purchase and install equipment that they could not use.”

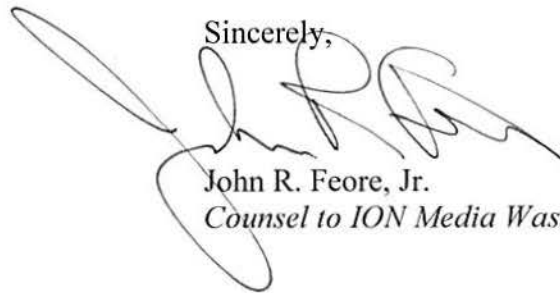
ION satisfies the presumption set forth in the *EAS Fifth Report and Order*. ION’s parent company is the ultimate owner of many television stations across the country. As ION’s parent company was preparing each of its stations to comply with the CAP-related Emergency Alert System (“EAS”) obligations the Commission announced in its *EAS Fifth Report and Order*, ION determined that no physical broadband Internet connection is available at the transmitter site of the Unserved Station.<sup>6</sup> Therefore, the Unserved Station would not be able to use any CAP-compliant equipment.

ION takes its responsibilities to comply with the Commission’s rules, including the CAP Rules, very seriously. ION commits to continue to operate its legacy EAS equipment during the duration of the requested waiver. Moreover, every six months ION will determine whether broadband Internet access has become physically available at the Unserved Station’s transmitter site and will file its findings in EB Docket No. 12-4. If broadband Internet access is physically available at the site, ION will alert the Commission that it plans to come into full compliance with the CAP Rules with respect to that site. If broadband Internet access remains physically unavailable, ION will request a six-month extension of the waiver.

Given the physical unavailability of broadband Internet access at the Unserved Station’s transmitter site, ION submits that it would not serve the public interest for the Commission to enforce the CAP rules when the physical predicate for compliance with those rules is not present. Accordingly, ION respectfully requests waiver of the CAP Rules with respect to the Unserved Station until such time as broadband Internet access becomes physically available at the Unserved Station’s transmitter site.

Please contact the undersigned if any questions should arise concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Feore, Jr.", with a large, stylized flourish extending from the bottom left.

John R. Feore, Jr.  
*Counsel to ION Media Wassau License, Inc.*

Enclosure

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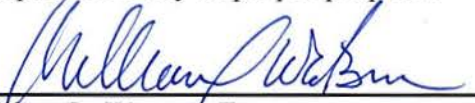
<sup>5</sup> *Id.*

<sup>6</sup> See Declaration of Bill Watson, attached hereto.

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

**DECLARATION OF BILL WATSON**

1. My name is Bill Watson and I am Vice President for ION Media Networks, Inc. ("ION"), ultimate owner of television stations WTPX-TV, Antigo, Wisconsin (the "Unserved Station").
2. ION personnel have investigated options for physical broadband Internet access at the Unserved Station's transmitter site and have determined that no such service currently is available.
3. I have read the foregoing "Request for Waiver of CAP Obligations" (the "Waiver Request") and I am familiar with the contents thereof.
4. I declare under penalty of perjury that the facts contained herein and within the foregoing Waiver Request are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry, that the Waiver Request is well grounded in fact, that it is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose.

  
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William L. Watson, Esq.  
ION Media Networks, Inc.  
601 Clearwater Park Road  
West Palm Beach, FL 33401

Dated: May 24, 2012